creditor. If, for instance, the fiduciary becomes bankrupt, and it appears that the fund for distribution among his creditors has been increased by the misapplication of the trust fund, it is obviously inequitable that the other creditors should derive any advantage from such increase. In other words, they ought not to be permitted unjustly to enrich themselves at the expense of the innocent *cestui que trust*. The latter's right to a preference has, accordingly, been recognized in several cases.[1]

CONSIDERATION VOID IN PART. — (*From the lectures of Prof. Keener.*)—Under the doctrine of consideration void in part, the offeree may, if he finds among the things requested by the offerer in exchange for his promise, that which is in itself or in law impossible of performance (*Cripps* v. *Golding*, 1 Rolle's Abr. 30), or that which if standing alone would not be sufficient as a consideration (*Crisp* v. *Gammel*, Cro. Jac. 128), disregard the terms of the offer, and on his doing what remains, the offerer will be bound.

This doctrine cannot be supported on principle.

The objection to it is not that it violates any principle of the law of consideration, but that it violates the fundamental principle of the doctrine of mutual consent. The law recognizes in general the right of the offerer to propose the terms on which he will be bound. When one offers to become bound on another's doing certain things, the doing of those things is as much a condition precedent to the creation of an obligation as the doing of them would be a condition precedent to the creation of a liability, if, instead of making an offer, the party had covenanted to do certain things on the covenantee's doing the things in question.

The true doctrine would seem to be that while the offer will not ripen into a promise until the offeree has done all that the offerer requested him to do, yet, when all has been done, it is no defence for the promisor to say that some of the things done were insufficient in point of consideration.

To satisfy the fundamental principle of mutual consent, all must be done that the offerer requests.

The law of consideration is satisfied if, in doing those things, the offeree has, because of the doing of any one of them, suffered a detriment at the promisor's request in exchange for his promise.

EQUITY, SPECIFIC PERFORMANCE, MUTUALITY OF REMEDY. — (*From Prof. Langdell's Lectures.*) — The rule as to mutuality of remedy is obscure in principle and in extent, artificial, and difficult to understand and to remember. The rule is entirely one of remedy; that the remedy by specific performance must be mutual.

The rule assumes that the contract is bilateral. It does not mean that there may not be specific performance of a unilateral contract. There may be performance of such a contract; for instance, of a covenant to convey land, made upon good consideration. From the terms of the rule it is assumed that the contract itself is mutual, that is, bilateral;

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[1] Peak *v.* Ellicott, 30 Kas. 156; Ellicott *v.* Brown, 31 Kas. 170; Harrison *v.* Smith, 83 Mo. 210 (overruling Mills *v.* Post, 76 Mo. 426); People *v.* City Bank, 96 N. Y. 32; People *v.* Dansville Bank, 39 Hun, 187; McColl *v.* Fraser, 40 Hun, 111 (semble); McLeod *v.* Evans, 66 Wis. 401.

But see, *contra*, White *v.* Jones, 6 N. B. R. 175; Re Hosie, 7 N. B. R. 601 (semble); Re Coan Co. 12 N. B. R. 203; Illinois Bank *v.* First Bank, 15 Fed. Rep. 858.

or, at least, that it was intended to be bilateral. If one side of a contract fails, but the other is, for some reason, binding, it is really a unilateral contract; yet equity will not enforce it. A recognized exception is the case where one side of a contract is in writing, the other unenforceable by the Statute of Frauds. In that case, perhaps in deference to the language of the statute, the side which has been put in writing will be enforced. (Hatton *v.* Gray, 2 Ch. Cas. 164.)

It is generally agreed that the mutuality has reference to the state of things when the contract was made; otherwise the rule involves an absurdity, for the remedy is almost never mutual at the time of filing the bill. The plaintiff alone can then have a remedy; he cannot maintain his bill unless the defendant is in default and he himself is not in default; the defendant in such a case could not maintain a bill. It is not a question, therefore, of the time when the remedy is sought, but of the time when the contract is made.

It is doubtful whether the rule as to mutuality is in force in Massachusetts. In the case of *Dresel* v. *Jordan* (104 Mass. 407), it was assumed that the rule was in force, and that, therefore, it would follow that a vendor of land could generally file a bill for the purchase-money. The correctness of this assumption, however, seems to be greatly shaken by the later case of *Jones* v. *Newhall* (115 Mass. 244), decided by the same judge. That was the case of a contract for the sale of shares in a land company. The purchase-money was payable absolutely; conveyance of the shares was conditional on payment of the purchase-money. The vendor filed a bill to recover the purchase-money, and the court dismissed the bill, on the ground that the remedy at law was adequate.

It seems impossible to reconcile this decision with the assumption in the case of *Dresel* v. *Jordan*. The vendee could have performance; therefore, if the rule as to mutuality of remedy is in force, the vendor should have it. The court does not notice the case of *Dresel* v. *Jordan*, and does not discuss the question of mutuality of remedy; it inquires only whether in the particular case the plaintiff has an adequate remedy at law. This is in fact an utter repudiation of the principle of mutuality of remedy. It is by no means to be regretted that this rule should be repudiated.

RECENT CASES.

ATTORNEY — IMPLIED AUTHORITY. — An attorney-at-law has implied authority to do all things which affect the remedy only, and not the cause of action; he may, therefore, dismiss a suit. *Davis* v. *Hall*, 3 S. W. Rep. (Mo.) 383.

CARRIER — LIMIT OF LIABILITY. — A common carrier cannot by contract avoid its liability for negligence; but where rates of transportation of freight are graduated according to the value of freight, and a limit of liability is fixed for each class of freight, a shipper who chooses to ship an animal worth $5,000 in a class in which the limit is fixed at $75, cannot for the loss of the animal recover more than $75. *Hill* v. *R. Co.*, 10 N.-East. Rep. (Mass.) 836. To the same effect. *R'y Co.* v. *McCarthy*, Weekly Notes (Eng.) 1887, p. 34, reversing s. c. L. R. Ir. 18 Q. B. D. 1.

CONDITIONAL SALE. — When the question is whether corn was bought conditionally upon the result of "inspection" after delivery to vendee, it is for the jury to decide whether the selling of a portion after delivery but before inspec-